at the place of delivery, and, if there be no market at that place, the value in the most available market, with the cost of transportation added, and the expense of making the repurchase.

2. On failure of seller to deliver the goods sold in order to recover resulting damages, it is not necessary that the vendee should have actually gone into the market and bought other goods to supply the place of those not delivered.

BALTIMORE & O. R. CO. v. BURKE & HERBERT.

June 16, 1904.

ASSUMPSIT—IMPLIED PROMISE—MONEY HAD AND RECEIVED—COLLECTION OF CHECKS.

1. As between a promisor and a promisee there is privity, and if the facts raise an implied promise on the part of the defendant, or if the defendant has money in his possession which he ought to pay to the plaintiff, the law will imply a promise on the part of defendant to do his duty and pay the money.

2. Where a bank received certain checks, the property of plaintiff, from the hands of his agent for collection, and the checks were not properly indorsed, they did not receive the money of the plaintiff, as that money could only be taken from the banks on which the checks were drawn on a proper indorsement of those payable to plaintiff, and the bank was not liable to plaintiff for such sums, though the bank was the depository of plaintiff, there being no privity to support the action between them.

WILLIS v. GORRELL et al.

June 16, 1904.

ATTORNEYS—CLAIMS—COLLECTION—AUTHORITY—TERMINATION—PAYMENT.

1. Plaintiff's husband held a debt against defendant, and delivered the same to an attorney for collection, taking the latter's receipt therefor. Thereafter the attorney reported to his client that he had secured the debt by taking a deed of trust on a quantity of real estate, at which the client expressed satisfaction, but left the claim in the attorney's possession, thereafter, however, receiving interest direct from the debtor until he assigned the claim to plaintiff, of which assignment the debtor was notified. *Held*, that the attorney having taken security for the debt, it was no longer in his hands for collection, and his authority to receive payment was terminated.

2. An attorney empowered to collect a claim accepted security therefor to the satisfaction of his client, and thereafter accepted a note of the debtor for the amount of the claim, which he discounted, converting the proceeds to his own use. He thereafter satisfied the security without the knowledge of an assignee of the claim. The debtor, notwithstanding the giving of such note, continued to make semi-annual payments of interest on the debt to such assignee for several years. *Held*, that the payment of such note did not constitute a payment of the debt.